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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Supplementary reports of States parties due in 1992

Addendum

MEXICO*

[21 July 1992]

* The initial report submitted by the Government of Mexico is contained in document CAT/C/5/Add.7; for its consideration by the Committee, see documents CAT/C/SR.16 and 17 and the Official Records of the General Assembly, forty-fourth session, Supplement No. 46 (A/44/46), paras. 170-201. For the additional information submitted by the Government of Mexico, see document CAT/C/5/Add.22. For general information about Mexico, see document HRI/CORE/1/Add.12.

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I. INTRODUCTION

1. As a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mexico is submitting its first periodic report for consideration by the Committee against Torture, in conformity with the provisions of article 19 of the Convention. Since the submission of its initial report (CAT/C/5/Add.7) in August 1988, much progress has been made in the legislative, administrative and judicial spheres.

2. Article 133 of the Constitution of the United Mexican States provides that international treaties concluded by the President of the Republic, with the approval of the Senate, shall, together with the Constitution itself and the laws of the Federal Congress, represent the supreme law of the entire nation; in view of this provision, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment forms part of national legislation, and can represent a basis and foundation for any legal action.

3. In conformity with the principles enshrined in the Constitution, the Mexican State shares the responsibility and concern of the community of nations to protect and oversee the fundamental rights of the human being, and has accordingly signed and ratified various instruments of world and regional scope in this area.

4. The Convention against Torture is consistent with our Constitution. When it acceded to the Convention, Mexico reaffirmed that the rights recognized in the Convention were in force in the country and thus helped to extend their universal validity, making a clear commitment to this end before the community of nations.

5. In its initial report (CAT/C/5/Add.7), the Government of Mexico gave a detailed description of the constitutional provisions and specific national laws that guarantee respect for the human rights of all individuals in its territory and under its jurisdiction, with no distinction whatsoever, and of efforts to combat torture and impunity.

6. This report will cover the period 1988-1992 and will draw the Committee's attention to the measures which the Government of Mexico has adopted in order to prevent and punish torture. Following the guidelines regarding the form and content of reports (CAT/C/14) and the Committee's general comments and observations on various articles of the Convention, the Government of Mexico has included in this document information on national policy and on the positive measures which it has adopted in connection with the articles of the Convention.

7. Mexico has participated with determination and enthusiasm in the great wave of internationalization of the protection of human rights by means of declarations, covenants, conventions and judicial commissions and bodies designed to improve this protection and make it more effective. In this framework, the Government of Mexico signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 January 1986.

8. Mexico's libertarian calling is the basis for the defence of human rights of Mexicans in Mexico and abroad. The internal changes in Mexico and the civilized coexistence of Mexicans would be inconceivable without general, public and effective respect for human rights. The protection of these rights is not a concession to society, but the primary obligation of the Government towards Mexicans. The Government recognizes the need for strict compliance with the rule of law and unreserved respect for the human rights laid down in the Mexican Constitution. The chapter on individual guarantees and social rights in our Constitution does honour to Mexican constitutionalism and to the most modern conception of universal law.

9. One of the basic objectives of President Carlos Salinas de Gortari has been to strengthen the country's democratic institutions and thus preserve the rule of law. The fundamental rights of all individuals, both Mexicans and foreigners, who live in or travel through Mexico are enshrined in our Constitution and the laws in force. To guarantee these rights, the Mexican legal system has institutions and procedures to ensure their full and effective enforcement. In Mexico, political will and legislation guarantee human rights, and thus combat torture and impunity. The President of the Republic has categorically stated on various occasions that his Government will not conceal abuses, dishonesty or excesses committed by any person who neglects his or her responsibility as a public servant and that it will not defend particular interests that attempt to set themselves above the rule of law.

10. In order to give the highest priority to individual and social guarantees, the President of Mexico has established a new mechanism for the defence of human rights, and by a decree dated 6 June 1990 established the National Human Rights Commission (CNDH), which, in its capacity as "Ombudsman", generally looks into violations of human rights, conducts such investigations as it considers necessary, assesses the evidence and issues appropriate recommendations. The CNDH has a Council composed of leading national figures representing the plurality and diversity of Mexican society. It is thus a representative body of unquestionable moral standing.

11. The terms of reference and action of the CNDH are clearly defined: the Constitution and its national human rights programme, the relevant laws, the international treaties and agreements signed by Mexico, and the presidential decree establishing and organizing the CNDH and precisely defining its powers, without duplicating already-existing bodies or authorities. The establishment of the CNDH ushered in a new stage in the defence of human rights in Mexico; this was strengthened in December 1991, when the Congress of the Union, on the initiative of President Salinas de Gortari himself, decided to give the CNDH constitutional status.

12. The Congress of the Union is currently discussing the Executive's proposed bill relating to the organization of the CNDH. The Bill comprises the many positive aspects of the regulations currently governing the Commission and has been expanded mainly to reflect the experience gained in two years of existence and to include other provisions based on the findings of similar institutions in our country, as well as institutions elsewhere in Latin America and other bodies having a legal tradition similar to our own.

13. On 28 January 1992, the Diario Oficial de la Federación published a Decree which added a paragraph B to article 102 of the Constitution, empowering federal and state congresses to establish bodies for the protection of human rights, with constitutional status, in their respective areas of competence. In addition, the new developments in Mexico's political, economic and social situation have led to a systematic review of its criminal laws, with a view to the full protection of human rights. Various amendments of the penal codes enforced in Mexico have been approved by the Congress of the Union; they represent great progress in the reform of the Mexican judicial system, designed to enhance and protect human rights and civil rights in general.

14. The CNDH, for its part, has submitted a number of bills in cooperation with distinguished Mexican jurists: the new Federal Act to Prevent and Punish Torture; the National Human Rights Commission Organization Act; amendments to the Federal Penal Code; amendments to the Federal Code of Penal Procedure and Federal District Code of Penal Procedure; and amendments to the Act establishing the Guardianship Councils for juvenile offenders in the Federal District. In addition, the Office of the Attorney-General of the Republic has been reorganized and progress is being made in the professional training of the Federal Judicial Police. Stricter measures have been taken to protect detainees, inform their relatives and prevent any type of torture or disappearance.

15. Legally speaking, torture has been condemned in Mexico since ancient times. In keeping with that tradition, and in support of the constitutional provisions and instruments signed by Mexico, the Federal Act to Prevent and Punish Torture was passed in 1986. In view of the results achieved and the procedural reforms made for the same purpose, it became necessary for the Act to be amended in order to meet its objective more effectively. Thus in December 1991 the Congress of the Union approved a new Federal Act to Prevent and Punish Torture.

16. Among the complaints submitted to the CNDH, several of which are still being investigated to determine the truth of the allegations they contain, the most recurrent cases have been the following, in order of frequency: arbitrary detention, denial of justice, abuse of authority, delay in the administration of justice, false charges, procedural flaws, torture, violation of prisoners' rights, dissatisfaction with a judgement, ruling or decision, and refusal of requests for medical attention. In this connection, the CNDH has focused its efforts on combating torture and impunity, as can be seen from the following table.

RECORD OF COMPLAINTS EFFORTS TO COMBAT IMPUNITY		
Period	Complaints of torture	Percentage of total complaints
June - Dec. 1990	180	13.4
Dec. 1990 - May 1991	266	13.9
June - Dec. 1991	156	6.2
Dec. 1991 - June 1992	134	2.9

Source: CNDH, Fourth Biannual Report, December 1991 - June 1992 (annex 1).

17. The Government of Mexico, aware of the persistence of certain violations of human rights, reaffirms its commitment to continued progress in the defence of human rights and punishment of those responsible for violating them.

II. ANALYSIS OF ARTICLES

Article 1

18. Pursuant to the provisions of article 89, paragraph 1, of the Mexican Constitution, on 27 December 1991 the Decree issued by the Congress of the United Mexican States relating to the Federal Act to Prevent and Punish Torture was published in the Diario Oficial.

19. Article 3 of the new Act incorporates almost literally the terms of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It reads as follows:

> "Article 3. The offence of torture is committed by a public servant who, by virtue of his office, inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining from him or a third person information or a confession or punishing him for an act he or a third person has committed or is suspected of having committed."

20. The proposed decree amending article 3 of the Federal Act to Prevent and Punish Torture is dealt with in paragraphs 38-41 of this report.

Article 2

21. In accordance with the commitments entered into by Mexico, information on the legislative, administrative and judicial measures taken between 1988 and 1992 to prevent torture is given below.

A. Legislative measures

22. Gradually but inexorably, the Mexican legal system has established a number of instruments to protect human rights. Chief among them is the remedy of amparo, but there are also administrative procedures and appeals, and the various courts, which together constitute a comprehensive system of protection for the legitimate interests of our country's inhabitants.

23. Since the beginning of President Salinas de Gortari's term of office, a number of legislative proposals basically intended to update criminal legislation and improve procedures in order to achieve strict respect for, and preservation of, human rights have been submitted to the Congress of the Union for consideration.

24. In this process of change and improvement, the Federal Executive has endorsed proposals made by the National Human Rights Commission (CNDH) for the introduction and adoption of both legislative and administrative measures. This was the case with various legislative proposals to amend the Penal Code and the Federal and Federal District Codes of Penal Procedure, which Congress has approved.

25. On a proposal by the CNDH, draft legislation was introduced to amend the Federal Act on the Responsibilities of Public Servants, with a view to making it obligatory for the latter to provide the Commission with information it requires in the course of an investigation for the proper fulfilment of its duties.

26. The Federal Executive submitted to Congress, at the last ordinary session, draft legislation to add to article 102 of the Constitution a provision for the establishment of organs for the protection of human rights. A new draft Federal Act to Prevent and Punish Torture was also introduced. Both bills were approved.

27. There is a permanent connection between improvements in the system of justice and practical respect for the fundamental guarantees set forth in the Constitution. As a State subject to the rule of law, Mexico must provide society as a whole with the legal means to strengthen the defence and protection of the human rights of all its citizens.

28. The modernization of the country entails narrowing the gap between the legal norm in which social justice takes shape and the reality of everyday life. For this purpose, it has been decided to improve the legal proceedings for dealing with applications from the individuals and social groups most vulnerable to abuses of their essential rights and to promote greater awareness of the limits on the powers of the authorities and of the inviolable dignity of the human being.

29. In this context, institutions have been developed to prevent and punish abuses of authority in the application of the law, in an endeavour to reaffirm the rule of law in Mexico through strict supervision of the constitutionality and legality of the acts of official bodies.

1. The new Federal Act to Prevent and Punish Torture

30. Since the prohibition of torture is affirmed as a constitutional guarantee, it is the function of the Congress of the Union to legislate on the matter for the whole Republic, covering all public servants - federal, state and municipal. The nationwide scope of the laws protecting individual guarantees is thus ensured.

31. In this connection, on 27 December 1991, as stated in the section relating to article 1 (paras. 18-20), the new Federal Act to Prevent and Punish Torture was published in the Diario Oficial de la Federación. Its main purposes are to eliminate any form of impunity and to ensure strict observance of the law. The new legislation further improves upon the instruments for the defence of citizens envisaged in the 1986 Act and establishes more severe penalties for persons who violate the physical or moral integrity of others and measures to safeguard the dignity of the human being.

32. The procedural rights of any person being investigated for an offence are formally expanded; in addition, the rights of Indians to be defended in their own language are assured, and provision is made for the benefits of a pardon or amnesty to be extended to the most needy. The new legislation attaches no probative value to confessions made before police authorities. The same will apply to statements made before officials of the Public Prosecutor's Department or the judicial authorities if counsel for the defence was not present.

33. The term of imprisonment for persons who have committed torture will be 3 to 12 years, whereas it was previously 2 to 10 years. There is now an obligation to pay legal, medical, funeral and any other costs. Persons involved in any of the offences provided for in the aforementioned Act will have to compensate the victim or his relatives in cases involving loss of life, liberty, property or earnings, impairment of health, unfitness for work or impairment of reputation.

34. In addition, the Federal Government was required to carry out continuing programmes for the prevention of torture, thus making the State increasingly responsible vis-à-vis its citizens. Another point covered by the new legislation is that an order given by a superior or by any other official will not be able to be invoked as justification for torture.

35. The new legislation helps to enrich the Mexican legal framework as regards both the defence of human rights and the administration of justice, by promoting a more precise observance of the individual guarantees of persons involved in any offence and by professionalizing the police and public servants who take part in the custody, arrest, detention or imprisonment of any citizen.

36. Thus the adoption of this Act is related to other instruments such as the International Covenant on Civil and Political Rights (art. 2, para. 2). Each State party undertakes to adopt the necessary measures to give effect to the rights recognized in the Covenant, and although these legislative provisions

were already taken into account in Mexican legislation, there are elements updating and strengthening the law which serve to deter members of the public administration from resorting to torture.

37. The full text of the Federal Act to Prevent and Punish Torture is included as an annex to the present report (annex 2).

Decree amending article 3 of the Federal Act to Prevent and Punish Torture

38. According to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was promulgated by a Decree published in the Diario Oficial de la Federación on 6 March 1986, the definition of torture includes intimidation and coercion by a public official against any person.

39. Similar concepts are embodied in the Inter-American Convention to Prevent and Punish Torture adopted at Cartagena de Indias, Colombia, which was promulgated by a Decree published in the Diario Oficial de la Federación on 11 September 1987, in so far as the use of intimidatory methods is included in the concept of torture.

40. On the basis of the analysis of the material supplied by the National Human Rights Commission, the main purpose of this Decree is to add coercion to the definition of the offence of torture, which at present covers cases in which a public official, by virtue of his office:

(a) Inflicts upon a person severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession from him or from a third person; and

(b) Inflicts upon a person severe pain or suffering for the purpose of punishing him for an act he has committed or is suspected of having committed.

41. With a view to achieving greater compatibility with the above-mentioned international instruments, the present proposal is for an additional provision under which a public official who inflicts on another person severe pain or suffering for the purpose of coercing him to engage in or to refrain from certain conduct is guilty of the offence of torture (see annex 3).

2. Legal Action in the administration of justice taken by the Attorney-General of the Republic

42. The legal action in the administration of justice taken by the Attorney-General of the Republic has consisted of the implementation of decisions duly published in the Diario Oficial, which are of a domestic character and have been widely disseminated (see annex 4):

A/020/91: Decision instructing staff of the Attorney-General's Office about the Powers and Functions of the Human Rights Commission.

A/029/91: Decision establishing the Internal Inspection Unit of the Federal Judicial Police and Specialized Services.

A/030/91: Decision establishing the Disciplinary Commission of the Federal Judicial Police and Specialized Services.

A/033/91: Decision establishing the Prevention of Corruption Committee.

A/036/91: Decision appointing an official of the Federal Public Prosecutor's Department to serve as General Supervisor for Community Services.

A/027/91: Decision establishing the register of vehicles of the Attorney-General's Office.

A/050/91: Decision instructing officials of the Federal Public Prosecutor's Department on how to proceed and deal with drug addicts and conduct entailing little danger.

A/004/92: Decision ordering the establishment of the Multipartite Citizens' Committee within the Office of the Attorney-General of the Republic.

3. National Human Rights Commission Organization Act

43. The Federal Executive has submitted for consideration by the Congress of the Union the proposed Organization Act relating to the National Human Rights Commission, which has so far been governed only by its statutes. Pursuant to the provisions of article 102 of the Constitution, the bill relates to the competence of the CNDH, as well as its essential purpose in matters pertaining to the protection, observance, promotion, study and dissemination of human rights. The proposed membership of the CNDH is essentially similar to the present membership, since it consists of a President, a Council, a number of inspectors and an Executive Secretariat, in addition to the professional, technical and administrative staff required for the performance of its functions.

44. The Council will be composed of persons of high intellectual and moral repute serving in an honorary capacity, and representing various shades of opinion and social attitudes. This is considered to be a contribution by Mexican law to the general concept of the Ombudsman, which it positively enriches, as has been shown in practice by the present CNDH. In the draft legislation it is proposed that the members of the Council be appointed by the Head of the Federal Executive, with the approval of the Senate. The President of the Commission, who is at present also designated by the President of the Republic, would be also appointed by the Head of the Federal Executive, with the approval of the Senate, for a renewable period of four years. This is intended to ensure that members of the Council and the President of the Commission are completely impartial and independent, since they are thus granted greater guarantees of stability, autonomy and authority.

45. The practice of the present Commission has shown that conferring responsibility for all investigations on a single person imposes an undue burden. As proposed in the draft legislation, therefore, this activity, an

essential aspect of the Commission's protective functions, should be shared among up to three inspectors, who would also assist the President of the Commission and could act as his substitute.

46. The general powers conferred on the National Human Rights Commission in addition to those exercised by the Ombudsman, such as the investigation of complaints and objections of individuals, the formulation of independent public recommendations not binding on the competent authorities and proposals for general modifications of administrative practices, regulations and legislative provisions, include others designed to promote an awareness of basic rights and of the instruments protecting them among the various sectors of society, with a view to creating and enhancing the kind of cultural background needed for the effective safeguarding of those rights, in accordance with the principles of participatory democracy. The draft legislation provides that the Commission should refrain from dealing with consultations initiated by authorities, social groups or individuals as to the interpretation and scope of basic rights, since it is not a judicial body. It is also considered that it should not prejudge matters within its competence in the abstract and independently of the cases submitted to it or the cases which it initiates ex officio.

47. As far as judicial matters are concerned, the experience of the present Commission and of other similar bodies in Mexico and abroad indicates that the field in which the Commission may intervene without in any way encroaching on the independence and autonomy of judges and courts is restricted to the acts and omissions of judicial bodies having a purely administrative nature.

48. The proposed legislation devotes a whole chapter to the precise regulation of the procedures that may be followed before the National Commission, specifying the essential formalities required in the documentation of the relevant proceedings. The procedures should be prompt and streamlined, in an endeavour to achieve, as far as possible, direct contact with complainants, claimants and officials so as to avoid the delays associated with written communications. There is also a chapter governing the obligations and cooperation of the authorities and public officials in their dealings with the National Commission.

49. It is proposed that decisions and independent public recommendations made by the National Commission should be carefully regulated, in the knowledge that its recommendations represent the final decision of the President of the Commission. In pursuance of the provisions of the Constitution, the proposed legislation lays down the characteristics of such recommendations, which, like those of an Ombudsman, are not binding and may not annul, modify or void the decisions or acts against which the complaints or objections have been lodged. The fact that recommendations are not binding on authorities or public officials does not deprive them of effectiveness, since experience has shown that they derive their force from the public nature of the Commission's acts and from public opinion, which are essential components of contemporary societies. Furthermore, if the decisions were binding, they would become actual judicial decisions requiring the formalities of a trial in the strict sense of the word.

50. It is proposed to make it obligatory for authorities or public officials to whom recommendations are communicated to state, within 15 working days, whether they accept them and, if they do, to transmit to the National Commission, within 30 working days, evidence that they have complied with them, in order to prevent such authorities or officials from delaying or evading the execution of recommendations they have expressly accepted.

51. As in the case of the Ombudsman and bearing in mind the experience of the present Commission, an obligation is also imposed on the National Commission to submit periodic annual reports. If the proposed legislation is adopted, the reports will have to be sent both to the Senate and to the Head of the Federal Executive. They will be disseminated via the media, without prejudice to the submission and publication of special reports, which will generally deal with specific points when the National Commission itself considers it appropriate or necessary. A proposal is made for a provision on any observations and comments that the Head of the Federal Executive or the Senate may make on the reports of the National Commission, but in view of the Commission's independence such observations and comments will not contain specific instructions.

52. In conformity with the provisions of article 102 of the Constitution, the draft legislation includes a proposal regarding the procedure for substantiating the objections presented to the CNDH in respect of the recommendations, decisions or omissions of the equivalent bodies in the states making up the Federation. For these purposes, provision is made for the processing of appeals complaining against or challenging decisions:

(a) An appeal complaining against a decision (recurso de queja) may be submitted in cases where serious harm is suffered as a result of the omissions or inaction of local bodies in respect of proceedings concerning violations of human rights that may have been substantiated before the latter;

(b) An appeal challenging a decision (recurso de impugnación) may be brought before the National Commission in respect of final decisions by state human rights bodies or of final reports by local authorities on compliance with the recommendations made by human rights bodies in the various states.

53. In the draft legislation, reference is made to the constitutional and other legal provisions applicable with regard to the penal and administrative responsibilities which public authorities incur in processing complaints and disagreements before the CNDH.

54. A special situation arises in cases where the above-mentioned authorities and public officials that are required to take part or cooperate in the National Commission's investigations take evasive or obstructive action, notwithstanding the official requests which the Commission may have addressed to them. In this connection, the Commission itself will be able to issue a public or private warning, depending on the circumstances, but apart from that it will have to report to the competent organ any serious offences or misdemeanours which the authorities or public officials may have committed and will be able to bring contraventions to the knowledge of the disciplinary authorities for the purposes of the imposition, where appropriate, of the relevant penalties.

55. In submitting for consideration by the Congress of the Union the proposed National Human Rights Commission Organization Act (see annex 5), the present Administration is reiterating the policy of protecting and defending human rights which it has constantly and continuously sought to promote. The proposed legislation forms part of the process of modernizing the Mexican legal system, the goal and guiding principle of which has been justice (see, in annex 6, the joint report of the Senate's Committee on Human Rights and Committee on Legislative Studies concerning the proposed National Human Rights Commission Organization Act of 9 June 1992).

B. Administrative measures

National Human Rights Commission

56. The National Human Rights Commission (CNDH) was established in June 1990. This body is responsible for serving Mexican society by enabling it to take an active part in the identification and reporting of those acts of the authorities which in some way involve or may involve a violation of human rights, and thus promoting the effective protection of citizens against such acts and their consequences. The establishment of the National Commission has strengthened compliance with the international commitments entered into by the Mexican State within the framework of cooperation among members of the international community, with a view to guaranteeing the full, free and universal exercise of human rights (see, in annex 7, the CNDH brochure No. 90/4 entitled "Basic documents of the National Human Rights Commission", which includes the Decree establishing the CNDH and its statutes, as well as a section containing questions and answers on human rights and the CNDH).

57. The Commission has been the body responsible for promoting and supervising the execution of national policy with regard to respect for, and the defence of, human rights; in no way, however, can it be considered an institution that replaces the organs responsible for securing and dispensing justice. Consequently, the Commission is structured like an Ombudsman and is empowered to make independent public recommendations to the competent authorities. In this way, the institution of the Ombudsman is kept outside the jurisdiction of the judicial organs, with full respect for the separation of powers and the independence of the judges and courts.

58. Likewise, the organs responsible for the protection of human rights lack jurisdiction to consider cases involving elections and labour matters, since they must remain outside the political debate; otherwise their authority would be weakened and their essential impartiality could be affected. Furthermore, in the case of labour conflicts, it would be inadmissible for them to duplicate or take over the specific functions of the labour boards, which resolve controversies between parties such as those that arise from a contractual relationship.

59. The National Human Rights Commission has systematically kept Mexican society fully informed of its activities, programmes and achievements. The information is largely transmitted via: a news programme on its methods of work, which is broadcast daily at different times by Mexico's various television channels; its monthly gazette; its half-yearly reports; its press releases, which are issued twice a week on average; its weekly programmes on

Radio Educación and Radio UNAM; and its Sunday page in the El Nacional newspaper. Special reports have also been published in the CNDH gazette (see, in annex 8, the videotape of the news programme).

60. During the second half of 1991, due to the publication of two reports on human rights in Mexico by prominent international non-governmental organizations, the CNDH received a large number of questions and requests for information from Mexican NGOs, the media, various ombudsmen both Mexican and foreign, and many private individuals in Mexico and abroad. In accordance, therefore, with the clear information policy for which it is known, a special report was issued in September 1991 as a means of answering the most important questions and concerns within its competence.

61. Between November 1991 and May 1992, 4,503 further complaints were received. A total of 4,908 complaints were processed, including those which were already pending, in other words 3,475 more than in the first year. Over 57 per cent of the complaints were settled out of court. One hundred and ten recommendations were issued as well as 75 documents exonerating various officials accused of human rights violations but eventually cleared after investigation. Of the total number of recommendations issued by the CNDH, only 12 have been fully implemented while 73 have been partially implemented.

62. The 110 recommendations may be classified as follows:

(a) Recommendations relating to acts of torture (11);

(b) Recommendations on the country's prison system (42);

(c) Recommendations on the Special Programme on Attacks on Journalists (1);

(d) Recommendations on the Indigenous Affairs Programme (1);

(e) Recommendations on the Missing Persons Programme (4);

(f) Recommendations on other matters (51).

The substance of each of the recommendations, its follow-up and appraisal of results are detailed in the half-yearly reports, the gazette and the special reports referred to earlier. The CNDH has referred to the question of the penalties imposed on public officials as a result of its recommendations, and of which it has proper proof, in the context of efforts to combat impunity.

63. The results of the Commission's campaign against impunity can be summed up as follows: 266 public officials have been penalized, (110 federal, 151 local and 5 municipal); of these, criminal proceedings have been brought against 95.

64. It should be pointed out that some of the exoneration documents issued by the National Commission referred to alleged cases of torture:

(a) The case of Mr. Juan Manuel Alvarez Rosales, who complained of being tortured by officers from the "Gamma" group within the

Directorate-General for Public Security in the State of Veracruz. From the evidence collected by the CNDH, it was concluded that the complainant's claim that he had been forced to swallow glass was false, the deception being established by medical examination carried out by the National Institute of Nutrition;

(b) The case of Mr. Carlos Hernández Rojas in the State of Tlaxcala, referred by an association, which alleged that he had been tortured and refused medical attention in the State's Social Rehabilitation Centre. When visited in his place of imprisonment, he affirmed that he had never been tortured, deprived of food or ill-treated;

(c) The case of Mr. Victorino Mateos Virgas in the State of Oaxaca, who, in addition to alleging torture, alleged unlawful entry, unlawful imprisonment and incommunicado detention. The complainant is being prosecuted for assault, robbery and criminal association, but from the investigation carried out by the CNDH it was clear that Mr. Mateos Virgas had not been tortured;

(d) The case of Mr. José Antonio González Rosada in the Federal District, who accused two officers of the Federal District Judicial Police of torture. The CNDH concluded from its evidence, that Mr. González Rosada had not been tortured.

65. The National Commission wishes to make the following statement:

"With regard to complaints of torture, the problem for the CNDH is that in many cases there is no evidence of any kind of the alleged torture. The CNDH does not doubt that on some occasions, while there may be no evidence, given the secrecy surrounding acts of that kind and the fact that many forms of torture leave no visible mark that might merit a medical certificate, torture could nevertheless have occurred. However, the CNDH cannot make any statement to that effect unless it has grounds for so doing, in other words, reliable evidence.

"When the public discussion on this problem was opened, a discussion which the CNDH has encouraged, people who had been imprisoned for months or even years without ever having alleged torture suddenly reported to the Commission that acts of torture had been committed against them, acts which because of their circumstances and particularly in view of the time that has elapsed are materially impossible to prove.

"Without evidence, the CNDH cannot support an accusation of torture; were it to do so, it would offend society because offenders, including drug traffickers, who have not been tortured could go free. Furthermore, the campaign against impunity would be harmed by allowing people guilty of an offence to go free.

"The United Nations Special Rapporteur on Torture constantly points out that he can only accept accusations of torture if they are properly substantiated. According to that criterion, there are at present only nine cases of torture in Mexico recognized by the Special Rapporteur. The CNDH reiterates that where there is evidence and well-founded

presumption of fact, it will continue to act as it has done - resolutely and energetically - and will defend the victims until they obtain justice. Without evidence, it will not commit itself.

"The report by Amnesty International entitled 'Mexico: torture with impunity' refers to the accusation made by the Bi-National Centre for Human Rights in Tijuana of torture and ill-treatment allegedly inflicted on 108 juveniles between 9 and 17 years of age by officers of the Federal Judicial Police and the Judicial Police of the State of Baja California. In April 1991, CNDH representatives visited Mr. Clark Alfaro, director of the Centre, to collect details of each case so that it could make investigations in accordance with the Commission's statutes. It has nevertheless transpired that the CNDH cannot prove the cause for complaint for lack of evidence, nor was any proof found in the course of its preliminary investigations.

"The CNDH cannot intervene without a clear indication of the acts which violate human rights, of how and when they occurred, which authorities were allegedly responsible in each case, and the names and addresses of the victims. Anonymous messages and statistics do not constitute complaints as far as the National Commission is concerned."

66. The Commission's concern about torture gave rise to one of its first information and sensitization activities, namely, the organization of a National Day Against Torture. In no similar forum have people spoken out with such frankness against torture. The diagnosis was clear: it is a complex and multifaceted phenomenon whose continuation is attributable to legal and structural factors, corruption, lack of training, together with economic, psychological, social and moral factors. The need to attack on all those fronts, as the Commission is doing, did not go unheeded.

67. The result was that the President of the Republic was presented with the package of amendments to the Federal and Federal District Codes of Penal Procedure, which entered into force on 1 February 1991. As a result of these amendments any confession made to a police authority has ceased to be valid. A confession is only valid if it is made before a public prosecutor or competent judge and in the presence of the defence counsel or a person who has the trust of the deponent. In order to give full publicity to these changes, a "Human rights: first aid" leaflet was distributed widely listing all the rights of individuals in Mexico, with due emphasis on the amendments (see annex 9).

68. The National Commission has made the following statement:

"Torture has not disappeared in Mexico as a result of the entry into force of the amendments to the principal Codes of Procedure, but there are signs that it is on the decrease. The CNDH has stated that these amendments form part of a wider strategy in which the punishment of offenders is an essential part. The fight against torture, as described by the CNDH in its programme of work, includes the promulgation of the new Act against Torture, which will remedy the shortcomings of the

previous Act from the point of view of effectiveness, and permit the continuation of investigations into the complaints made about this problem.

"Amnesty International, in the report referred to earlier, mentions 40 of the cases known to the CNDH. Of those, 22 have been the subject of recommendations, three were settled during the proceedings, three were terminated because of the complainant's loss of interest in continuing the procedure, two were terminated for lack of jurisdiction, and ten are under investigation. Thus, out of the 40 cases reported by Amnesty International and known to the CNDH, 30 have been terminated and 10 are under investigation.

"However, Amnesty International mentions other specific cases not known to the Commission and about which it has received no complaint.

"The National Human Rights Commission is making a frontal attack on impunity. Its concern is humanitarian, not political. Its sole truth is that which can be deduced from the records and proved. The CNDH, upon ascertaining the responsibility of officials who acted outside the law, exposes it publicly in its recommendations and calls for the appropriate penalty. It follows up its recommendations to ensure compliance. What it cannot and will not do is to pass judgement without adequate evidence.

"The National Commission is confident that it has the backing and support of broad sectors of Mexican society and of the Mexican Government. It is doing everything in its power to do justice to that support in its fight against torture and impunity."

(a) Membership of the National Human Rights Commission

69. The members of the National Human Rights Commission are persons of high national and international refute who are well known for their concern to protect life and human rights. They have an outstanding record in the many aspects of their professions and reflect the pluralistic nature of Mexico's political system.

70. Mr. Jorge Carpizo, President of the Commission, has had various academic and administrative posts in the Autonomous University of Mexico. He was Principal of the Máxima Casa de Estudios from 1985 to 1989, practising lawyer, Coordinator of Humanities and Director of the Legal Research Institute, and has been appointed Permanent Judge of the Supreme Court of Justice.

71. The following are members of the Council:

Héctor Aguilar Camín, writer and journalist, editor of the magazine Nexos. Juan Casillas, General Secretary of the National Association of Universities and Higher Education Institutes (ANUIES);

Carlos Escandón Domínquez S.J., former Rector of the Latin American University;

Carlos Fuentes, writer, former Ambassador of Mexico to France; holder of the National Prize for Literature;

Javier Gil Castañeda, leading defender of the peasants in Mexico;

Professor Oscar González César, former Coordinator of the Mexican Commission for Aid to Refugees (COMAR) in the Ministry of the Interior;

Carlos Payán Velver, journalist, editor of La Jornada;

César Sepúlveda, former Director of the Faculty of Law in the National Autonomous University of Mexico and former Ambassador of Mexico to the Federal Republic of Germany;

Rodolfo Stavenhagen, sociologist, President of the Mexican Academy of Human Rights, and nationally and internationally known expert in Indian affairs;

Arturo Warman, former Director of the National Indian Institute, who currently heads the Office for Agrarian Affairs.

72. In addition to the President, a Council, a Technical Secretariat of the Council, an Executive Secretariat and an Inspectorate, the CNDH also has departments of administration, communications, training and information, international affairs, projects and documentation, orientation, complaints and management, and procedures, legal opinions and decisions.

(b) Coordination between the Ministry of Foreign Affairs and the National Human Rights Commission

73. The powers conferred on the National Human Rights Commission by the Decree of 6 June 1990 provide for coordination with the Ministry of Foreign Affairs in matters of an international nature involving human rights. In that connection the following coordinating mechanisms have been established:

(i) Communications

74. Communications regarding possible violations of human rights in Mexico, including torture, transmitted by accredited embassies in Mexico, Mexico's missions in other countries, international organizations, NGOs and private individuals, and any general reports presented on the subject are passed on to the CNDH, so that the relevant information and comments can be requested in each case, or the necessary investigations carried out. The CNDH is kept informed of the receipt of denunciations by various international bodies and, where relevant, of the time-limits for the Mexican Government's reply, in accordance with the legislation in force. The official reply of the Mexican Government is transmitted via the Ministry of Foreign Affairs.

(ii) National reports

75. The preparation of the periodic reports, such as the present report, which the Mexican Government has an obligation to submit in compliance with the multilateral conventions to which Mexico is a party called for the

establishment of a technical working group consisting of the General Coordinating Office for Human Rights and Drugs Traffic representing the Foreign Ministry, the Attorney-General's Office and the Executive Secretariat of the CNDH.

(iii) International organizations

76. The Ministry of Foreign Affairs is responsible for accrediting Mexico's representation in the forums of the United Nations and the Inter-American system for the promotion of human rights. Consultation machinery has been set up with the Office of the Attorney-General of the Republic, the office of the Attorney-General of the Federal District, local authorities and the CNDH through its Executive Secretariat so that more material will be available to enable the Ministry of Foreign Affairs to establish the general criteria for (a) the participation of the Mexican Government in those forums in accordance with the relevance or priority of the subjects in question for Mexico and, (b) proposals for and negotiations on new international instruments within the framework of the United Nations and OAS.

(iv) Non-governmental organizations

77. In order to promote relations and contacts with national and international non-governmental organizations, the CNDH Inspectorate has established a strategy, in collaboration with the Ministry of Foreign Affairs, strengthening communications with the NGOs. As part of its programme of work for the second semester of activities (January-June 1991), the CNDH undertook to prepare a National Annotated Directory of Non-Governmental Human Rights Organizations.

78. In pursuance of that objective, it compiled a Directory containing, in addition to the customary information - address, telephone number and representatives, information on the objectives of the organizations, the services they provide to the community and their publications. The first edition of the Directory consists of 69 record cards for Mexican organizations which were contacted directly in order to obtain or confirm the information provided therein. This first edition is not considered to be complete or exhaustive, as the list used as a basis for the work is longer than that in the Directory, due to the fact that not all the known human rights NGOs replied to the various communications sent out by the National Commission (see, in annex 10, the Annotated Directory, the Decree and regulation relating to the CNDH, together with a guide for the referral, presentation and processing of complaints to the Commission).

(v) Public opinion

79. The distribution at the international level of information regarding national policy on respect for, and protection of, human rights, which is the responsibility of the Ministry of Foreign Affairs, is carried out in collaboration with the Executive Secretariat of the CNDH and its Council's Technical Secretariat. All Mexican Missions abroad receive each month several copies of the gazette (see annex 11) published monthly by the CNDH, together with the relevant documents. The gazettes report the recommendations made on cases of torture, which are fully documented.

C. Judicial measures

Programmes of the Office of the Attorney-General of the Republic

80. The creation of a legal system with a human face which fully guarantees decent treatment for detainees and unconditional respect for human rights calls for a greater capacity for response and renewed impetus for the public services provided by the Attorney-General's Office, through genuine participation with society. Respect for human rights is a priority issue for the Attorney-General's Office. One objective which underlies its activities is the maintenance of unconditional respect for the human rights of all Mexicans and foreigners in Mexico. It was the express wish of the Attorney-General of the Republic that his Office should become a source for the continuing promotion of human rights education. The modern constitutional State is conceived as a promoter and guardian of the principles of legality which in turn promote the proper application of individual and social guarantees. The modernization stage that which Mexico is passing requires greater effectiveness in the administration of justice, thus ensuring the validity of the body of law and principles enshrined in our Constitution.

(a) Internal Control Unit of the Attorney-General's Office

81. In order to fulfil its objective of promoting and defending human rights, the Attorney-General's Office has established special procedures and mechanisms to detect, investigate and punish torture, in order to prevent impunity, through its Internal Control Unit. This unit carries out the necessary investigations into the complaints it receives in order to ascertain responsibilities and punish public officials who are found to be guilty.

(b) Comprehensive Information and Care Programme for Detainees and Addicts

82. A system using the available technological advances has been established within the Attorney-General's Office in order to provide greater clarity and openness in its actions and procedures. As part of the new phase of modernization of the Office, Comprehensive Information and Care Programme for Detainees (PIDE) was put into operation on 25 September 1991, under the responsibility of the Department for the Care of Detainees and Addicts (see annex 12).

83. The Department for the Care of Detainees and Addicts is responsible for fulfilling the following objectives, inter alia:

(i) Development of legal, supervisory and aid mechanisms for the care of persons involved in offences against health, particularly addicts and persistent offenders who require medical treatment rather than prison sentences, peasants, indigenous or monolingual persons involved in these offences, and, generally speaking, any detainees who are educationally backward, socially isolated and suffering extreme hardship, as victims of their social environment;

(ii) Prevention of depravity, abuses and violations of rights, and increased humanization of the task of securing justice in these procedures;

(iii) To ensure the proper application of the procedures guaranteeing civilized treatment in the task of securing justice;

(iv) To respond in an appropriate manner to any requests by the public for information on detainees;

(v) To establish mechanisms for legal supervision to facilitate the treatment and social rehabilitation of addicts;

(vi) To coordinate activities with the public, social and private sectors in order to reduce the illicit demand for drugs;

(vii) To direct, control and supervise the implementation of national care programmes for the victims of crimes, addicts and detainees.

84. The programme provides a flexible mechanism for ensuring unconditional respect for individual guarantees and contributes to the creation of a more humane system of justice, which fully guarantees decent treatment for persons involved in criminal activity. The PIDE has a national information system for detainees, a mechanism for the care and promotion of the individual guarantees of persons imprisoned for federal crimes, a confidential system of reporting for citizens and an inter-agency coordination system for the care of addicts.

(c) Multipartite Citizens' Committee within the Attorney-General's Office

85. Ignacio Morales Lechuga, the Attorney-General of the Republic, set up the multipartite Citizens' Committee on 12 March 1992 to monitor the activities of his Office. It consists of 10 former deputies and congressmen from the country's main political parties (PAN, PRD and PRI), who do not act in a political capacity. The Committee's job is to ensure that the work of the Attorney-General's Office is carried out according to the rule of law and serves principally as a defender of human rights. Its members make periodic visits to the various local branches of the Attorney-General's Office to ensure to the extent possible that Federal Judicial Police officers do not persist in committing unlawful acts. They keep a national register of all the Judicial Police officers so that the latter can easily be traced and prosecuted should they commit an offence.

86. The Committee checks on the treatment of detainees and produces a monthly report for the Attorney-General in order that he may impose penalties where appropriate. The members of the Committee deal with reports by members of the public of violations of human rights by Federal Judicial Police officers, but they do not assume the functions of the National Human Rights Commission. The Committee is a body which reports anomalies and proposes solutions. It is independent of the Attorney-General's Office and its members do not draw salaries from that Office. (see annex 4).

Article 3

87. The protection of refugees and asylum-seekers in Mexico is enshrined in the government's deepest traditions of freedom. The Government consequently stated, in its 1989-1994 National Development Plan: "Mexico's foreign policy has been adapted to the following rules which will remain in force:

sovereignty over natural resources; the defence and observance of the right of asylum...". In this spirit, refugees are taken into account in development plans and strategies, particularly in the states where they have settled. Mexico has maintained the policy of asylum which it has pursued for 168 years in the interests of all persecuted persons, and is, at present assisting almost 50,000 refugees: of this number 43,505 are Guatemalan, 11,051 (25.4 per cent) of whom are settled in Campeche, 24,649 in Chiapas (56.7 per cent) and 7,805 (17.9 per cent) in Quintana Roo. In addition 4,033 Salvadorians and 1,015 from other Latin American countries have taken advantage of Mexico's tradition of providing asylum and are residing in various states of the Republic.

88. In spite of the fact that the refugee population has found the basic conditions in Mexico in terms of education, health, training and infrastructure, an increase in the number of repatriations became apparent in 1991, when 1,215 persons returned to their own countries a total of 7,041 Guatemalan refugees have returned to their country of origin since 1984. In view of a possibly higher rate of repatriation, the Mexican authorities are examining ways of assisting the countries of origin of the majority of the refugees in the fields of education, health, training and bilateral technical cooperation.

89. To that end, and prior to the Tuxtla Gutiérrez summit meeting of the president of Mexico and Central American countries in January 1991, the Mexican Government set up the Mexican Commission for Cooperation with Central America, chaired by a representative of the Ministry of Foreign Affairs. The purpose of this Commission, established in November 1990, is to "collaborate in the economic and social development of the Central American countries, and to contribute to the strengthening of Mexico's relations with those countries". By means of the technical cooperation which Mexico provides for its neighbouring countries, the problem of displacement in Central America can be alleviated by making use of Mexico's experience.

90. The most outstanding of the advances in national policies relating to the treatment of the refugee populations was the approval of amendments to the General Population Act to include refugees. The relevant bill was approved by consensus in the Chamber of Deputies and Senators and was promulgated on 17 July 1990.

91. These amendments incorporate the most up-to-date international legislation, broadening the grounds for possible fear of persecution, such as the violation of human rights, foreign occupation, internal conflicts, widespread violence and other circumstances which have seriously disturbed public order in the refugees' country of origin. The migration authority is in the process of preparing, on the basis of the present standards, regulations which will govern eligibility procedures and mechanisms.

92. Mexico has at the same time maintained the institution of asylum, invariably adhering to the inter-American framework of the Convention on Territorial Asylum and the Convention on Diplomatic Asylum. There is thus a stronger legal arsenal, which strengthens the institution of diplomatic asylum.

93. The interaction and integration of the refugees in their Mexican environment has been growing increasingly more positive as the refugees gradually get to know the country's customs and laws and its national and local legal framework. Within the context of human rights, two seminar-workshops have been held for the refugee population; they were organized by the Inter-American Institute of Human Rights. For those refugees who decide to remain in Mexican territory in the medium term, and in the interests of genuine integration, consideration is being given to the establishment of a proper legal framework based on the amendments to the General Population Act referred to earlier. Mexico has accordingly fulfilled the undertakings set forth in the plan of action of the Inter-national Conference on Central American Refugees (CIREFCA).

94. With regard to respect for the wishes of refugees to return to their country of origin, Mexico has scrupulously observed the principle of voluntary repatriation. In this spirit, programmed repatriations take place every 15 days; it is also promoting efforts to find broader, more gradual and better organized repatriation processes on condition that the above-mentioned principle is safeguarded. In this same context it encourages visits with a view to repatriation to the refugees' country of origin, to repatriation provided that the institution of asylum is fully protected.

95. In addition the tripartite meetings between Mexico, Guatemala and UNHCR constitute a mechanism developed years before CIREFCA came into being; 11 such meetings have been held to date. These meetings are chiefly, intended to deal with matters relating to voluntary repatriation which are of interest both to the country of asylum and to the country of origin.

96. The Government's policy of supporting the local integration of all refugees wishing to remain in Mexican territory has been implemented through the programmes executed by the Mexican Commission for Aid to Refugees (COMAR), in collaboration with the United Nations and the international community.

97. In September 1989 Mexico put into in operation the CIREFCA National Coordinating and Follow-up Committee consisting of representatives of COMAR, and the Ministries of Foreign Affairs, the Interior, Labour and Social Security, and Finance. The United Nations Development Programme (UNDP) and UNHCR are also represented on that Committee.

98. With regard to extradition, the information provided in the previous report (CAT/C/5/Add.7, paras. 19-21) is still valid.

Article 4

99. In view of the specific information on penalties and preventive measures called for in articles 4, 10 and 11 of the Convention, articles 4, 5 and 6 of the new Mexican Act provide for criminal and administrative penalties for any person who commits the offence of torture:

> "Article 4. Anyone committing the offence of torture shall be liable to 3 to 12 years' imprisonment, 200 to 500 days' fine and disqualification from any public office, post or assignment for up to twice the length of the term of imprisonment imposed. For the

purposes of determining the amount of the fine, reference shall be made to article 29 of the Penal Code for the Federal District in respect of Ordinary Law and for the Entire Republic in respect of Federal Law."

"Article 5. The penalties provided for in the preceding article shall be imposed on a public servant who, in performing his duties and for any of the purposes referred to in article 3, incites, compels, authorizes or makes use of a third party to inflict serious pain or suffering, whether physical or mental, on another person or who does not prevent such pain or suffering from being inflicted on a person in his custody.

The same penalties shall be imposed on a third party who, for any purpose, has been incited or authorized, whether explicitly or implicitly, by a public servant to inflict serious pain or suffering, whether physical or mental, on a prisoner."

"Article 6. Exceptional situations, such as internal political instability, urgent investigations or any other circumstance, may not be invoked or regarded as a ground for exemption from responsibility for the offence of torture. Nor may an order from a superior officer or any other official be invoked as justification."

As stated above, penalties have been imposed on 266 public officials (110 federal, 151 local and 5 municipal). Criminal proceedings were brought in 95 of these cases.

Implementation of the new Federal Act to Prevent and Punish Torture

100. The following are general cases in which the new Federal Act to Prevent and Punish Torture has been implemented, and which have been handled by the Office of the Specialized Prosecutor to Deal with Offences committed by Public Officials and with Special Laws, within the Office of the Attorney-General of the Republic. Criminal proceedings have been brought against the following public officials:

1. A.P. 3666/FSP/91:

(a) Accused: Roberto Olivares Oropeza, Pascual Gutiérrez Minjarez, Sergio Hernández Ramírez, Perceo Díaz Castillo and Jaime Ochoa Rodríguez.

Offences: torture, obstructing the administration of justice, giving false information to a superior officer.

(b) Accused: Beltrán Antonio Robles Hansen.

Offence: obstructing the administration of justice.

(c) Accused: Salvador Acosta Ortíz and Crecencio Abarca Rebolledo.

Offences: obstructing the administration of justice and giving false information to a superior officer.

(d) Accused: Rogelio Olivares Oropeza, Pascual Gutiérrez Minjarez and Crecencio Abarca Rebolledo.

Offence: perjury.

2. A.P. 5442/FSP/91:

(a) Accused: Alejandro Aguilar Torres, Omar Olguín Alpizar, Alejandro Pestaño Montoya, Antonio Reyes Sarmiento and José Arnulfo Rivera Ahumada.

Offence: aggravated homicide.

(b) Accused: José Arnulfo Rivera Ahumada.

Offence: torture.

3. A.P. 5452/FSP/91:

(a) Accused: Alejandro Cruz Guerrero, Jesús Fernando Rodríguez Pérez and Arturo Ruíz Medina.

Offences: torture, abuse of authority, obstructing the administration of justice and usurping authority.

(b) Accused: Alejandro Cruz Guerrero and Jesús Fernando Rodríguez Pérez.

Offences: forgery and use of forged documents, giving false information to a superior officer, perjury and concealment.

4. A.P. 5474/FSP/91:

(a) Accused: Marco Antonio Ramírez Carrera and Moisés Figueroa Ventura.

Offences: abuse of authority and obstructing the administration of justice.

(b) Accused: Moisés Figueroa Ventura, Francisco Alegre Reyes, Gustavo Castrejon Aguilar, Pablo Humberto Corona Romero, César López Siliceo Esquer Raygadas, Alvaro González Mejorada, Fernando Javier Arias Rodríguez, Juan Francisco Escutia Villalobos, Leonardo Díaz Leal Torres and Gustavo Manterola Morales.

Offence: unlawful deprivation of freedom.

(c) Accused: Javier Alvarez Chávez and Teodomiro Echeverría Urrutia.

Offences: misrepresentation and concealment.

(d) Accused: Francisco Alegre Reyes, Gustavo Castrejón Aguilar and Pablo Humberto Corona Romero.

Offence: torture.

5. A.P. 6703/FSP/91:

(a) Accused: Pascual Candelario Gutiérrez Minjarez, Rogelio Julio Olivares Oropeza and Rafael Antonio Lozano Gutiérrez.

Offences: abuse of authority and torture.

(b) Accused: Rafael Antonio Lozano Gutiérrez.

Offence: obstructing the administration of justice.

101. Other earlier investigations which involved the offence of torture are:

1. A.P. 5604/S/91:

Offences: torture, abuse of authority and others.

Complainants: Camilo Beltrán Gastelúm and others.

Person allegedly responsible: Mario Alberto González Treviño.

Case referred to the Tenth Federal District Criminal Court on 27 September 1991.

2. A.P. 6688/91:

Offences: torture, bribery and others.

Complainants: Guadalupe Zazueta Calderón and others.

Person allegedly responsible: Mario Alberto González Treviño.

Case referred to the Tenth Federal District Criminal Court on 17 December 1991.

3. A.P. 6596/D/91:

Offences: Torture and others.

Complainants: Luz Gabriela López Ortega.

Persons allegedly responsible: Juan Manuel Pozos García, Sergio Camarillo Cuéllar, Jorge Caballero Carrera and Argelia Gabaldón Villuendas (M.P.F.).

Case now being heard.

Article 5

102. According to the provisions of this article to the effect that each State party shall take such measures as may be necessary to establish its jurisdiction over the offences of torture referred to in article 4, it is stipulated in articles 1, 4, 10 and 12 of the Mexican Act that the prevention and punishment of torture are applicable throughout the national territory in respect of federal jurisdiction and in the Federal District in respect of ordinary jurisdiction. These articles are reproduced below, with the exception of article 4, which has already been reproduced:

"Article 1. The purpose of this Act is to prevent and punish torture. It shall apply throughout the national territory in respect of federal jurisdiction and in the Federal District in respect of ordinary jurisdiction."

"Article 10. A person found guilty of any of the offences provided for in this Act shall have an obligation to meet the legal advice, medical, funeral, rehabilitation and any other costs incurred by the victim or his relatives as a result of the offence. He shall also have an obligation to provide redress for the injury and to compensate the victim or his dependants in the following cases:

I. Loss of life;

II. Impairment of health;

III. Loss of freedom;

IV. Loss of earnings;

V. Unfitness for work;

VI. Loss of, or damage to property;

VII. Impairment of reputation.

In determining the relevant amounts, the court shall take account of the extent of the injury caused.

Under the terms of article 32 (VI) of the Penal Code for the Federal District in respect of Ordinary Jurisdiction and for the Entire Republic in respect of Federal Jurisdiction, the State shall have a subsidiary obligation to provide redress provide redress for the injury."

"Article 12. In all matters not covered by this Act, the provisions of the Penal Code for the Federal District in respect of Ordinary Jurisdiction, and for the Entire Republic in respect of Federal Jurisdiction, the Federal Code of Penal Procedure, the Code of Penal Procedure for the Federal District, and the Act regulating article 119 of the Constitution of the United Mexican States shall be applicable."

Article 6

103. Respect for this article of the Convention is implicit in article 4 of the Act to Prevent and Punish Torture relating to penalties for torture. The previous report (CAT/C/5/Add.7) referred in detail to procedures for effecting an arrest. The videotape and the human rights first-aid leaflet referred to in paragraphs 59 and 67 of this report have helped to make these rules known to the public.

Article 7

104. All the extradition treaties concluded by the Government of Mexico contain an article allowing the State to refuse to extradite a Mexican national, with an obligation to try him in Mexico, since article 4 of the Mexican Penal Code entitles Mexican courts to try offences committed by Mexicans abroad, including torture. So far, there have not been any cases of this kind. It should be noted that the information on this article provided in the previous report (CAT/C/5/Add.7) is still valid.

Article 8

105. At present, the Government of Mexico is including in extradition treaties concluded with other countries an article stating that offences carrying a penalty of deprivation of freedom for one year or more constitute grounds for extradition. Article 4 of the Federal Act to Prevent and Punish Torture provides that anyone who commits the offence of torture shall be liable to 3 to 12 years' imprisonment; torture is thus implicitly covered by the extradition treaties signed by Mexico. Between July 1988 and the present, the Government of Mexico has signed extradition treaties with the following countries: Australia, 27 March 1991; Belize, 5 July 1989; Canada, 21 October 1990; Costa Rica, 13 October 1989; and Chile, 2 October 1990.

Article 9

106. In order to update the information provided in the previous report (CAT/C/5/Add.7) on international assistance in criminal proceedings which include the furnishing of evidence requested in connection with offences of torture, the Government of Mexico reports that, between July 1988 and the present, it has concluded treaties on extradition and mutual assistance with regard to criminal matters, on the enforcement of criminal sentences, and on judicial assistance in criminal matters with Costa Rica on 13 October 1989 and

with Chile on 2 October 1990. The legal bases for the prosecution of a person charged with the offence of torture are thus being broadened in the context of international cooperation.

107. However, legislation should, in our view, be enacted at the international level on the basis of the principles of non-interference in the internal affairs of countries and the self-determination of peoples. Furthermore, States should not take measures contrary to international law, such as the international abduction of persons who have been involved in or committed the offence of torture, since action to combat one offence cannot be taken by committing another offence.

Article 10

108. Mexican legislation embodies in article 2, paragraphs I to IV of the Act the measures that every State party should adopt to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

> "Article 2. The subsidiary organs of the Federal Executive concerned with the administration of justice shall conduct continuing programmes and establish procedures for:
>
> I. The guidance and assistance of the public in order to monitor full observance of the individual guarantees of persons involved in the commission of a criminal offence;
> II. The organization of training courses for their staff in order to encourage respect for human rights;
>
> III. The professional training of their police forces;
>
> IV. The professional training of public officials who are involved in the custody and treatment of any person who has been arrested or imprisoned."

Professional training programmes for the Judicial Police and Public Prosecutors' Departments

109. The National Institute of Criminal Sciences (INACIPE) and the Federal Judicial Police Institute, which are subordinates to the Office of the Attorney-General of the Republic, have implemented the following programmes over the last three years (see annex 13):

(a) The INACIPE 1992 work programme, which is concerned with professional training procedures for the Federal Public Prosecutor's Department and experts from the Attorney-General's Office, with particular emphasis on the scientific and technical expertise required for the investigation of offences, thereby helping to eradicate torture. The 1992 programme also includes the publications subprogramme, which contains material on human rights;

(b) Report for 1991, which highlights activities carried out in furtherance of human rights education;

(c) Initial training programme for Federal Judicial Police officers, with special emphasis on the protection of human rights;

(d) Refresher programme for Federal Judicial Police officers, with the same emphasis on the promotion of human rights;

(e) Federal Judicial Police induction programme, which also contains specific references to the protection of human rights;

(f) Technical training materials for prison officers, Practical operational module I, containing references to human rights and the prison system;

(g) Technical training materials for prison officers, legal module I, with specific reference to the Act to Prevent and Punish Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners;

(h) Arcana Imperi, notes on torture, which INACIPE has been publishing and disseminating since 1987, as a basic monograph, in the campaign against torture;

(i) Federal Judicial Police training manuals, Nos. 1, 2, 3, 4 and 5 of which refer specifically to the legal framework for the protection of human rights.

Activities of non-governmental organizations

110. Various non-governmental organizations, national as well as international, are working in conjunction with the National Human Rights Commission on the dissemination, promotion and teaching of human rights. One such organization is Amnesty International - Mexico, whose Human Rights Education Department promotes a variety of activities aimed at children as well as adults. At present, two plays for children highlighting violations of human rights are being performed in primary schools. The organizations also work with indigenous members of the community to ensure that the various indigenous peoples or nations are conversant with the contents of the Universal Declaration of Human Rights in their own language.

111. Amnesty International has conducted joint activities with the Mexican Academy of Human Rights to train police and judicial officers in human rights matters. A continuing human rights education campaign is being conducted for various police corps so that, when they make arrests, they do so without breaching the human rights of the persons arrested. Also in this connection, it has published jointly with the Mexican United Nations Association the "Police Guide", which is now being distributed (see annex 14). The aim of these activities is to induce public officials to modify their attitude and to make it clear to them that their work does not include violating human rights, even if their superiors order them to do so.

Article 11

112. The United Nations Standard Minimum Rules for the Treatment of Prisoners are embodied in national legislation, although prisoners are not always acquainted with them. In its recommendations concerning a particular prison, the National Human Rights Commission frequently states that the inmates should be informed of the prison regulations. In order to bring all these matters to the attention of public opinion, the National Commission has prepared a number of booklets giving information on visiting prisoners and preventing corruption in prisons. They are: "A person's rights when he is arrested, once the arresting officer or officers have fully identified themselves", "Guide for visiting a person in custody in a prison in the Federal District", "Rights of non-prosecutable and sick persons held in custody", "Guide on obtaining the benefits of release" and "Advice on how to avoid corruption in prisons" (see annex 15).

113. The following documents have also been prepared:

Basic documents against torture, by the CNDH;

Diagnosis of the situation of prisons in Mexico, by the CNDH;

Proposal and report on the Mexican prison system, by the CNDH;

Draft model prison regulations, by the CNDH;

Basic manual for prison staff, by the CNDH;

Report on the National Day Against Torture, by the CNDH;

Manual on security, supervision and custody (in prisons), by the CNDH;

Manual for prison instructors, by the CNDH.

114. In addition, model prison regulations embodying the minimum standards have been proposed for the whole country. Generally speaking they encompass a regime which brings human rights into line with security in prisons. They also establish an obligation on the part of the prison authorities to provide better facilities for access and supervision for human rights organizations.

Standards applied in the treatment of prisoners

115. In deference to the wishes and demands of the public, the Government of President Salinas de Gortari has promoted various amendments to the Codes of Penal Procedure. These amendments form part of a process of modernizing the procuration and administration of justice. They focus on firm but humane treatment of offenders, the reduction and decriminalization of certain acts, the establishment of alternative penalties to avoid abuse in prisons, but also more severe penalties for murderers, persons who perpetrate robbery with violence, rapists, drug traffickers and all persons who constitute a serious menace to society.

For the Office of the Attorney-General of the Republic, this legislation means that:

(a) No one under investigation by the Office may be compelled to testify against himself, be kept incommunicado or be subjected to physical or moral pressure;

(b) In order to prove that a person is guilty, it is essential that a confession should be set against, and supplemented by, the facts and other background information;

(c) Statements made to Federal Judicial Police officers may in no circumstances be taken as a confession or acknowledgement of guilt;

(d) When a detainee bears marks of violence or states that he has been subjected to violence, the Federal Public Prosecutor's Office must order a medical examination and, where appropriate, initiate an inquiry;

(e) The Federal Police may initiate proceedings or investigations only on express orders from superior officers or in an emergency or a case of flagrante delicto;

(f) Only the Federal Public Prosecutor's Department is empowered to receive reports, complaints or statements by persons under suspicion, experts or witnesses, or to question them. The aim is to guarantee the security of Mexicans in the exercise of their rights and to restrict powers and privileges that gave rise to arbitrary conduct and abuse;

(g) The vehicles of the Office now bear distinctive markings that enable them to be identified easily;

(h) A number of Federal Judicial Police posts and checkpoints on the roads have been disbanded; although they enabled large consignments of drugs to be seized, they were also a frequent source of friction with the public;

(i) Society, including minors, indigenous persons and elderly persons, has been viewed as a whole; changes based on humane considerations have also been made for their benefit, taking into account the particular circumstances of the individual;

(j) The difference between the drug victim and the drug-dealer has been established from a legal standpoint. Measures have been taken to provide assistance to addicts, in cooperation with the health services;

(k) The recognition, preservation and defence of human rights emanated from society; to ensure closer cooperation, the Office has promoted entry to detention facilities or areas for any legislator, people's representative or member of the Human Rights Commission at any time.

"Prison post-box" programme

116. In line with the comments on this article relating to prisoners' complaints, the Ministry of the Interior, as part of its functions, has sought

to organize alternative activities that are conducive to the optimum fulfilment of the responsibilities assigned to it. The Under-Secretariat for Civil Protection, Prevention and Social Rehabilitation, which is responsible for the management of the federal prison system, has planned and implemented a series of programmes that are of benefit to the community in general and to the country's prison population in particular. Based on the premise that in the prison sector there are, inevitably relationships of various kinds, resulting from the differing economic, social and cultural background of the individuals who are in detention, programmes aiming at a period of confinement in the greatest possible harmony and their full reintegration into the community to which they belong are fundamental in the task of prevention and social rehabilitation.

117. With these precepts in mind, the "prison post-box" programme has been established as an innovative device for interrelationship which seeks to achieve two basic objectives. The first is to establish and guarantee continuing contacts between the inmates of rehabilitation centres and their families and friends, both in Mexico and abroad, through the setting-up of a regular postal service in each of the 85 prisons (including the Islas Marias Federal Penal Settlement) designated for the initial phase of the programme. The second is to open a new channel of communications between the prison population and the Ministry of the Interior; for this purpose, a second post-box was introduced through which the inmates make known their problems and complaints and request legal, educational, psychological, social, medical and other guidance.

118. Efforts to move forward in establishing an alternative and integral project are based on individual efforts which have proved moderately successful. One project relates to the existence of telegraphic and postal services in a number of social rehabilitation centres and is the outcome of the interest, enthusiasm and determination of those who carried out their task. Nevertheless, these isolated initiatives have thus far prevented the benefits from being extended to each inmate. Complaints and reports about the functioning and lack of individual guarantees within prisons have been disseminated in a similarly sporadic manner. Although they have succeeded in attracting the attention of the national and international press, they have not given rise to organized action.

119. The "prison post-box" programme gave rise to two complementary services. These are turning into the guarantors of an inalienable right, which is at the same time a constitutional guarantee, namely, the right to communicate by post, even for a detainee.

After the programme had been approved:

(a) Consultation machinery was set up with the signing of a cooperation agreement between the Under-Secretary for Civil Protection, Prevention and Social Rehabilitation and the Director-General of the Mexican Postal Service on 21 November 1991;

(b) Two types of post-box were devised and installed; a blue one for ordinary mail and a red one for mail to the Ministry of the Interior;

(c) The staff selected and given responsibility for the new ordinary postal service (a small post office) in prisons received training;

(d) Five per cent of the proceeds from sales of postage stamps is given as an incentive to those in charge of this service within prisons;

(e) The postal service functions on a continuous and regular basis;

(f) The correspondence sent by detainees to the Ministry of the Interior and the replies sent through the prison post-box system are distributed free of charge. In a further initiative, the Mexican Postal Service (SEPOMEX) has produced special mailbags for this delivery service, which does not require the use of stamps.

120. As part of the sensitization process, the authorities sought the assistance of the General Department for Prevention and Social Rehabilitation which, given its functions, maintains close contacts with prison governors, directors of rehabilitation services in the States and the General Department of Prisons and Social Rehabilitation Centres of the DDF.

121. The setting-up of permanent and continuing communication through the prison post-box system with the National Human Rights Commission has been a development of major importance. At the request of the detainees themselves, concerning in particular the submission of complaints and irregularities, letters have been sent to the Commission in which the detainees concerned state their complaints and dissatisfaction with their treatment in certain prisons. Through the prison post-box system the sender receives the Commission's acknowledgement of receipt and the Commission, in conformity with the powers granted to it by law, will intervene in matters that warrant such action. As the same time, in accordance with its own procedures, it will inform detainees of the situation with regard to their cases.

Article 12

122. The new legal and administrative machinery devised to prevent the practice of torture includes article 11 of the new Federal Act to Prevent and Punish Torture and the National Human Rights Commission, as indicated in the information provided on article 2 in this report (paras. 30-79).

> "Article 11. A public official who, in the performance of his duties, learns of an act of torture has an obligation to report it forthwith. If he fails to do so, he shall be liable to three months' to three years' imprisonment and 15 to 60 days' fine, without prejudice to the provisions of other laws.
>
> In determining the amount of the fine, account shall be taken of the reference made in the last part of article 4 of this Act."

Article 13

123. The National Human Rights Commission has published a "Guide on the submission, referral and handling of complaints", which states:

"Submission of the complaint

Who may submit the complaint?

Anyone who suffers or learns of a violation of human rights has a legitimate right to submit a complaint to the CNDH.

Who violates human rights?

Those officials or public servants who, in the performance of their duties, violate or fail to apply the legal provisions that govern us. Consequently, conflicts that arise solely between individuals do not constitute grounds for a complaint of a violation of human rights. How are they violated?

When the officials fail to comply with administrative rules or legal procedures or commit offences that injure one or more persons. Also when the official or public servant gives his consent or is tolerant or negligent vis-à-vis such violations, misconduct or offences.

How is a complaint submitted?

(a) By writing to the Chairman of the National Human Rights Commission, naming the victim or victims;

(b) The acts that form the substance of the complaint are described, if possible with the name and rank of the official who, according to the victim or complainant, committed the violation;

(c) To expedite matters, it is essential to append all documents relating to the case with the complaint;

(d) With the full name, signature, full address or addresses of the complainant and if possible, the telephone number or numbers where he may be reached.

To whom and when may it be submitted?

Personally, by mail or fax, to the General Complaints Submission and Processing Department, Investigations Section, National Human Rights Commission, on any day of the year.

What procedures follow the submission of a complaint?

(a) Delivery and registration;

(b) Decision whether the Commission is competent or not, i.e. whether the complaint constitutes an alleged violation of human rights or whether the alleged victim should be referred to other public institutions;

(c) Contacts with, and request for information from, the official alleged to be responsible for violating human rights;

(d) Investigation of the case;

(e) Opinion as to whether or not the case actually constitutes a violation of human rights;

(f) If a violation is found to have occurred, a recommendation is transmitted to the responsible official or a solution is arrived at by mutual agreement.

Urgent complaints

When the seriousness of a human rights violation or a clear threat of such a violation so warrants, a complaint may be submitted by telephone in order to enable the Investigations Section to act directly and promptly in an attempt to resolve the matter. Subsequently, the complaint must be submitted in writing.

Progress report on the complaint

Once the complaint has been received, the Investigations Section endeavours to inform the person concerned of any significant developments in his case. The complainant may at any time, telephone to request general information on progress made with his complaint. In order to obtain more detailed information he should visit the Commission's offices or send a request in writing.

Essential data for the written statement of complaint

In order to register a complaint, it is essential that the written statement:

(a) Contains the full name and signature of the complainant(s), who may be the victim(s);

(b) Is transmitted to the CNDH;

(c) Gives the full address or addresses of the complainant or the victim.

Failing this, the written statement of complaint is not assigned a file number and is not processed."

The human rights leaflet distributed by the Commission also contains information on this point (see annex 9).

Article 14

124. Articles 4, 5 and 10 of the new Act to Prevent and Punish Torture establish various penalties for persons who commit torture. These articles were reproduced earlier. Article 10 provides that a person found guilty of the offence of torture have an obligation to provide fair and adequate redress and compensation to the victim. Similarly, article 32 (VI) of the Penal Code provides that the State shall have a subsidiary obligation to provide redress for the injury caused.

Article 15

125. The last paragraph of the human rights first-aid leaflet distributed by the National Human Rights Commission (see annex 9) tells people about the prohibition on using torture as a means of inducing a prisoner to make a statement against himself. Brochure No. 90/9, "The Human Rights of Mexicans", published by the National Human Rights Commission (see annex 16), also says in paragraph 16 (h) that "we cannot be forced by any means, still less by torture, beatings or ill-treatment, to state that we are guilty, in other words, to agree that we have committed the offence". The Commission's videotape, broadcast on television, also illustrates the same principle (see annex 8).

126. The new Federal Act to Prevent and Punish Torture stipulates:

> "Article 8. No confession or information obtained by means of torture may be invoked as evidence.
>
> "Article 9. No probative value whatsoever shall be placed on a confession made to the police, to the Public Prosecutor's Department or to a judicial authority without the presence of the accused person's defence counsel or confidant and, where appropriate, interpreter".

Article 16

127. The 1988 report (CAT/C/5/Add.7) is still valid. It should be added that the same leaflet on human rights tells people about their right not to be physically or psychologically ill-treated.

128. The brochure "The Human Rights of Mexicans" says in chapter 3, paragraph 19:

> "(19) Prohibition of torture, cruel, inhuman and degrading treatment and degrading punishment.
>
> If we have committed an offence, the authorities cannot use violence, such as torture, to find out whether in fact we behaved unlawfully. In the same way, neither the criminal laws nor the authorities can order us to be punished for our unlawful behaviours with beatings or torture of any kind. Nor can the court or the authority order one of our relatives or friends to complete our sentence if, for any reason (for example, if we die in prison), we cannot do so ourselves".

List of annexes*

1. Fourth half-yearly report, December 1991-June 1992. National Human Rights Commission

2. The new Federal Act to Prevent and Punish Torture (included in this report).

3. Draft Decree to amend article 3 of the new Federal Act to Prevent and Punish Torture.

4. Decisions of the Office of the Attorney-General of the Republic.

5. Draft National Human Rights Commission Organization Act.

6. Joint report of the Senate's Committee on Human Rights and Committee on Legislative Studies concerning the proposed National Human Rights Commission Organization Act, and the Decree amending article 102 of the Constitution of the United Mexican States.

7. National Human Rights Commission brochure No. 90/4: "Basic Documents of the National Human Rights Commission".

8. Videotape of the National Human Rights Commission's programme shown on Mexican television.

9. National Human Rights Commission leaflet: "Human rights: first Aid".

10. National Human Rights Commission's National Annotated Directory of Non-governmental Human Rights Organizations.

11. National Human Rights Commission Gazette No. 92/22, May 1992 (included in this report).

12. Comprehensive Information and Care Programme for Detainees (PIDE), Office of the Attorney-General of the Republic.

13. Professional Training Programmes for the Judicial Police and Public Prosecutors' Departments:

    (a) INACIPE 1992 Work Programme;

    (b) INACIPE 1991 report;

    (c) Initial training programme of the Federal Judicial Police Institute;

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* These documents may be consulted, in the Spanish version received from the Government of Mexico, in the files of the United Nations Centre for Human Rights. Annexes 2 and 11 are included in this report.

(d) Refresher programme of the Federal Judicial Police Institute;

(e) Induction programme of the Federal Judicial Police Institute;

(f) Technical training materials for prison officers, Practical operational module I. INACIPE;

(g) Technical Training materials for prison officers, legal module I. INACIPE;

(h) Arcana Imperi: notes on torture. INACIPE Publications;

(i) Federal Judicial Police training manuals (INACIPE-PGR).

14. The "Police Guide", a joint publication by the National Human Rights Commission and the Mexican United Nations Association.

15. National Human Rights Commission booklets:

(a) A person's rights when he is arrested, once the arresting officers or officers have fully identified themselves;

(b) Guide for visiting a person in custody in a prison in the Federal District;

(c) Rights of non-prosecutable and sick persons held in custody;

(d) Guide on obtaining the benefits of release;

(e) Advice on how to avoid corruption in prisons.

16. National Human Rights Commission brochure No. 90/9: "The Human Rights of Mexicans"

Annex 2

THE NEW FEDERAL ACT TO PREVENT AND PUNISH TORTURE

Article 1. The purpose of this Act is to prevent and punish torture. It shall apply throughout the national territory in respect of federal jurisdiction and in the Federal District in respect of ordinary jurisdiction.

Article 2. The subsidiary organs of the Federal Executive concerned with the administration of justice shall conduct continuing programmes and establish procedures for:

I. The guidance and assistance of the public in order to monitor full observance of the individual guarantees of persons involved in the commission of a criminal offence;

II. The Organization of training courses for their staff in order to encourage respect for human rights;

III. The professional training of their police forces;

IV. The professional training of public officials who are involved in the custody and treatment of any person who has been arrested or imprisoned.

Article 3. The offence of torture is committed by a public official who, by virtue of his office, inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining from him or a third person information or a confession or punishing him for an act he or a third person has committed or is suspected of having committed.

Discomfort or suffering that is the consequence solely of legal punishment, whether inherent in or incidental to the latter, or resulting from a lawful act by the authorities, shall not be regarded as torture.

Article 4. Anyone committing the offence of torture shall be liable to 3 to 12 years' imprisonment, 200 to 500 days' fine and disqualification from any public office, post or assignment for up to twice the length of the term of imprisonment imposed. For the purposes of determining the amount of the fine, reference shall be made to article 29 of the Penal Code for the Federal District in respect of Ordinary Law and for the Entire Republic in respect of Federal Law.

Article 5. The penalties provided for in the preceding article shall be imposed on a public official who, in performing his duties and for any of the purposes referred to in article 3, incites, compels, authorizes or makes use of a third party to inflict serious pain or suffering, whether physical or mental, on another person or who does not prevent such pain or suffering from being inflicted on a person in his custody.

The same penalties shall be imposed on a third party who, for any purpose, has been incited or authorized, whether explicitly or implicitly, by a public official to inflict serious pain or suffering, whether physical or mental, on a prisoner.

Article 6. Exceptional situations, such as internal political instability, urgent investigations or any other circumstance, may not be invoked or regarded as a ground for exemption from responsibility for the offence of torture. Nor may an order from a superior officer or any other official be involved as justification.

Article 7. When he so requests, any person in custody or convicted prisoner shall be examined by a physician and, in the absence of the latter or if the person also requires, by a person of his choice. The person making the examination is required to issue the corresponding certificate forthwith and, if he finds that pain or suffering, within the meaning of the first paragraph of article 3, has been inflicted, he shall inform the competent authority.

A request for a medical examination may be made by the prisoner's counsel or a third party.

Article 8. No confession or information obtained by means of torture may be invoked as evidence.

Article 9. No probative value whatsoever shall be placed on a confession made to the police, to the Public Prosecutor's Department or to a judicial authority without the presence of the accused person's defence counsel, or confidant and, where appropriate, interpreter.

Article 10. A person found guilty of any of the offences provided for in this Act shall have an obligation to meet the legal advice, medical, funeral, rehabilitation and any other costs incurred by the victim or his relatives as a result of the offence. He shall also have an obligation to provide redress for the injury and to compensate the victim or his dependants in the following cases:

(i) Loss of life;

(ii) Impairment of health;

(iii) Loss of freedom;

(iv) Loss of earnings;

(v) Unfitness for work;

(vi) Loss of, or damage to, property;

(vii) Impairment of reputation.

In determining the relevant amounts, the court shall take account of the extent of the injury caused.

Under the terms of article 32 (VI) of the Penal Code for the Federal District in respect of Ordinary Jurisdiction and for the Entire Republic in respect of Federal Jurisdiction, the State shall have a subsidiary obligation to provide redress for the injury.

Article 11. A public official who, in the performance of his duties, learns of an act of torture has an obligation to report it forthwith. If he fails to do so, he shall be liable to three months' to three years' imprisonment and 15 to 60 days' fine, without prejudice to the provisions of other laws. In determining the amount of the fine, account shall be taken of the reference made in the last part of article 4 of this Act.

Article 12. In all matters not covered by this Act, the provisions of the Penal Code for the Federal District in respect of Ordinary Jurisdiction and for the Entire Republic in respect of Federal Jurisdiction, the Federal Code of Penal Procedure, the Code of Penal Procedure for the Federal District, and the Act Regulating Article 119 of the Constitution of the United Mexican States shall be applicable.

INTERIM ARTICLES

1. This Act shall enter into force on the day following its publication in the Diario Oficial de la Federación.

2. The new Federal Act to Prevent and Punish Torture, published in the Diario Official de la Federacón on 21 May 1986, is hereby repealed, but shall continue to apply for offences committed while it was in force, unless the accused person states that he wishes the present Act to apply.

Annex 11

COMPREHENSIVE INFORMATION AND CARE PROGRAMME FOR DETAINEES

National system for information on detainees

The National System for Information on Detainees uses modern communications and data-processing systems to link, at an early stage, the Attorney-General's offices in the various states and thus to obtain relevant information rapidly in order to give an immediate response to requests from relatives, institutions and the public in general and prevent illegal practices or abuses in the procedures involved in the administration of justice.

The objectives of the National System for Information on Detainees are to:

Establish direct channels of communication accessible to the community and anyone requiring information on the whereabouts, legal situation and general status of persons detained for federal offences in the hands of the Public Prosecutor's Department or held in facilities of the Attorney-General's Office (PGR);

Provide timely information on the situation of persons in official custody and initial advice to the relatives of detainees on the procedures and steps to be taken to obtain legal support and assistance, and any other necessary immediate action;

Promote unconditional observance of the rights of detainees and monitor the application of the rules and procedures laid down by the various relevant legal instruments;

Work with social agencies and institutions to make information on detainees more accessible to the public;

Provide the public with information when cases of disappearances arise.

The National System for Information on Detainees is backed up by the PGR computerized network, through the system set up for this purpose by the PGR's data processing service. This system is linked with all the offices in the various states and thus has access to the daily records of the states and the Federal District.

The databases on detainees are supplied with information from all PGR offices. Within the PGR, close cooperation with other areas has been established so as to ensure the smooth exchange of information.

Members of the public can communicate directly by telephone or go in person to the centres for information on and assistance to detainees and addicts, where they will immediately be given information and advice on request.

To draw attention to this new service, the PGR has launched a publicity campaign through the media. The system is operated and regulated by the Department for the Treatment of Detainees and Addicts.

Monitoring and promotion of individual rights of detainees held for federal offences

As part of the general supervision of community services, dialogue and communication between the PGR and the public are to be strengthened, so as to deal effectively with requests and concerns regarding the federal justice system and human rights matters through the continuing implementation of measures to ensure unconditional observance of the individual rights of detainees.

The main objective is to ensure the proper implementation of procedures guaranteeing observance of the rights of detainees to life, security and integrity with regard to their treatment and the administration of justice. The following steps have been taken to this end:

Preparation of printed material on human rights, individual guarantees and institutional services, etc.;

Monitoring the conditions and procedures followed in places of detention on PGR premises;

Receiving complaints of ill-treatment and abuses by PGR personnel, for referral to the competent authority;

Publicizing the guarantees and human rights of detainees through the information and advisory services provided by the Attorney-General's Office;

Special attention given to the protection of individuals suffering from social and cultural alienation and extreme need, so as to provide them with legal and social assistance.

Centres for information on and assistance to detainees and addicts

The objectives of these information centres are to:

Establish an interdisciplinary team of professionals to provide information, advice and support to detainees and their relatives in legal, guardianship and assistance questions;

Establish channels of communication between the public and the PGR in order to promote access to PGR services, such as legal advice, institutional support and hearing of complaints;

Monitor conditions of detention and treatment of detainees by the PGR;

Suggest measures for the treatment, rehabilitation and social reintegration of drug-addicted detainees and their relatives;

Take the necessary measures to provide special assistance to detainees from the more vulnerable sectors who are the subject of investigation in PGR facilities;

Establish bases for institutional coordination and cooperation in order to facilitate social support for detainees and their relatives.

The Centre for Assistance to Detainees and Addicts, located in the premises of the General Supervision of Community Services Department in the Federal District, operates 24 hours a day, 365 days a year.

There are plans to set up centres in the provinces, in areas with the greatest number of federal detainees, to be administered by the state PGR office, in conjunction with the community services representative.

In states with no centre, the community services representative will be responsible for taking the necessary measures, assisting the community and concluding assistance agreements with academic and social institutions, with a view to developing the proposed programmes.

The functions of the Centres for information and assistance to detainees and addicts are to:

Channel drug addicts to the appropriate institutions, where they will receive rehabilitation treatment according to their general characteristics;

Receive, channel and/or, where necessary, deal with the suggestions and complaints of users, so as to improve the detainee and addict information service;

Propose special treatment alternatives for disadvantaged persons (indigenous inhabitants, peasants, minors, etc.);

Ensure that detainees are treated in accordance with their individual guarantees;

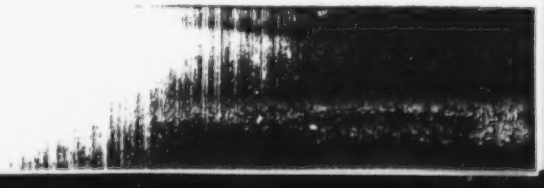
Inform relatives and/or friends of the whereabouts and status of detainees through the National System for Information on Detainees;

Prepare reports on projects and activities carried out by the Department for Assistance to Detainees and Addicts;

Apply the guidelines established by the Department for Assistance to Detainees and Addicts;

Conduct biological, psychological and social studies in support of the specialized services providing special assistance to detainees;

Conclude agreements/undertakings for the channelling of addicts and enter into agreements with institutions providing social, treatment and rehabilitation services, for the referral of drug addicts;



Monitor the continuity of treatment and propose measures for the social rehabilitation of addicts;

Propose to the Federal Public Prosecutor alternatives to legal penalties in appropriate cases and facilitate institutional rehabilitation back-up services;

Receive, forward and act on complaints and reports from the public regarding the treatment and situation of detainees, in addition to receiving suggestions.

The Centre for Information on Detainees and Addicts is staffed by lawyers, doctors, psychologists, social workers and administrative personnel.

Confidential Reporting System for the General Public

At present, the drug problem is one of the main concerns of the Government. The increase in drug production, trafficking and sales is affecting the health of the younger generation, the stability of social institutions and national security itself. Combating the drug trade is one of the Mexican Government's priorities.

The PGR, through the activities of the Department for General Supervision of Community Services, has established channels of communication to enable members of the public to report anyone selling or promoting the consumption of psychotropic substances or narcotics, by means of the Confidential Reporting System for the General Public.

The objectives of this programme are to:

Protect the public, particularly, young people, from the harmful effects of drug abuse;

Promote public participation in Mexico's anti-drugs campaign;

Combat the sale and distribution of drugs in the community, particularly in schools;

Set up machinery for receiving information on presumed illicit acts, to enable the public to report them in confidence;

Create in Mexican society an anti-drug culture and a responsible attitude towards acts which are damaging to the community;

Respond actively.

This System operates through the Centres for Information on and Assistance to Detainees and Addicts, which receive reports of offences against public health in writing, by telephone or in person. The confidentiality of such information and the anonymity of the informant are guaranteed at all times.

The information, classified on the basis of reliability, is forwarded to the special prosecutor for health offences, who will have the reported acts investigated by a specialized unit of the Federal Judicial Police.

Cases are investigated, and the public is informed of the results achieved or, if necessary, further information is sought. A computerized register of cases reported and the results is established so as to enable critical areas, calling for priority attention, to be identified.

In states without a Centre for Information on and Assistance to Detainees and Addicts, social welfare representatives will be responsible for receiving and forwarding reports. The duties of these officials within the Confidential Reporting System are:

Broadcasting via the media messages designed to draw attention to the threat presented by the drug trade and other unlawful acts, and encouraging the public to become involved by reporting such acts;

Establishing direct channels of communication to encourage the public to report apparently unlawful acts, particularly when the victims are minors, by dialling a special telephone number or going in person to one of the Centres for Information on and Assistance to Detainees and Addicts;

Establishing machinery for coordination with the special prosecutor for health offences, in order to make use of information from the public in investigating cases;

Establishing a computerized register, backed up by the PGR information network, for the verification and follow-up of information;

Publicizing the results of investigations and the action taken with the assistance of the public;

Setting up a special unit of the Federal Judicial Police to investigate acts reported by members of the public;

Proposing legislative measures for tighter control of psychotropic substances used in medicine and industry.

Inter-agency coordination for the treatment of addicts

In order to step up the PGR's anti-drugs campaign, a comprehensive programme is needed which goes beyond the limits of strictly preventive and medical action and forms part of an interdisciplinary operation which offers alternatives for the effective rehabilitation of addicts and thus attacks both drugs supply and demand.

The Inter-Agency Coordination System for the Treatment of Addicts establishes a new legal framework for legal protection and assistance, to enable the social service of the Office of the Federal Public Prosecutor to collaborate in and support the treatment of drug addicts.

This System is part of the PIDE and operates through the Centres for Information on and Assistance to Detainees and Addicts. The objectives of this programme are to:

Deal with the problem of drug abuse by establishing a system of inter-agency coordination for the treatment of addicts through legal and administrative mechanisms for the provision of social and legal assistance;

Coordinate with health and other agencies concerned with drug abuse, in order to help with the treatment and rehabilitation of drug addicts;

Promote treatment and rehabilitation alternatives for persons brought before the Public Prosecutor for the possession of small quantities of drugs and voluntarily opting for treatment instead of a criminal penalty;

Propose legislative measures for dealing with drug abuse, thereby reducing illegal demand for narcotics and psychotropic substances;

Combine the efforts of health and justice authorities for the treatment and rehabilitation of addicts;

Facilitate access to recreational, occupational and educational activities which contribute to the social rehabilitation of addicts;

In conjunction with the relevant protection agencies, propose measures for the guardianship of children of drug-addicted parents who are at risk.

These aims call for close coordination with the Office of the Federal Public Prosecutor in referring persons brought before it for the possession of small quantities of drugs for their own immediate use to the Centres for Information on and Assistance to Detainees and Addicts.

Agreements and undertakings have been concluded with those addicts and their relatives who are considered able to benefit from not serving a prison sentence, in order to complete their treatment.

A national directory of centres for treatment and rehabilitation of persons with drug-dependency problems has been compiled and is being continuously updated. Machinery for coordination with various agencies has also been set up, for the following purposes:

Referral of drug addicts to a treatment centre;

Receiving feedback from centres on the clinical condition, regularity of attendance, and discharges of drug addicts and any other information which might be useful for their rehabilitation;

Facilitating the provision of educational, assistance, guardianship and occupational services and benefits to persons registered under the programme;

Supporting and participating in the programmes of the Department for Assistance to Detainees and Addicts;

Exchanging information on possibly unlawful acts or complaints against public officials, in connection with the treatment of addicts;

Organizing academic, informational, popular and other events in support of social rehabilitation activities.